

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SHANNON ANDERSON SAEVIK,

Plaintiff,

v.

SWEDISH MEDICAL CENTER and
REBECCA DAY,

Defendants.

CASE NO. C19-1992-JCC

ORDER

This matter comes before the Court on Plaintiff's motion to compel (Dkt. No. 66). Having thoroughly considered the parties' briefing and the relevant record, the Court hereby GRANTS in part and DENIES in part the motion for the reasons explained herein.

Plaintiff moves to compel the deposition of Marlene McAninch, a Compliance Manager in Swedish's Office of Compliance & Privacy. (*See generally id.*) Plaintiff asserts Ms. McAninch's testimony is needed to provide Plaintiff with relevant discovery regarding the circumstances associated with Swedish's alleged breach of Plaintiff's medical privacy. (*Id.* at 5.) Resolution of this motion turns on a single issue: whether each of the Rule 30(b)(6) depositions taken to date by Plaintiff in this matter count as separate depositions for purposes of Federal Rule of Civil Procedure 30(a)(2)(A)(i). If so, the parties agree that a deposition of Ms. McAninch would require leave of the Court. (*See generally* Dkt. Nos. 66, 71, 76.) And Plaintiff would need to make a particularized showing of why the deposition is necessary, including a showing that

1 previous depositions were also necessary. *See Thykkuttathil v. Keese*, 294 F.R.D. 597, 600 (W.D.
2 Wash. 2013) (citing *Bell v. Fowler*, 99 F.3d 262, 271 (8th Cir. 1996)); *Galajian v. Beard*, 2016
3 WL 5373116, slip op. at 2 n.3 (W.D. Wash. 2016).

4 A recent Ninth Circuit opinion suggests that all Rule 30(b)(6) depositions are “‘treated as
5 a single deposition even though more than one person may be designated to testify.’” *Stevens v.*
6 *Corelogic, Inc.*, 899 F.3d 666, 679 n.13 (9th Cir. 2018) (quoting Fed. R. Civ. P. 30 advisory
7 committee’s note to 1993 amendment.) While this statement is dictum, it is highly persuasive.
8 *See Export Group v. Reef Industries, Inc.*, 54 F.3d 1466, 1472 (9th Cir. 1995). As Judge
9 Martinez indicated when reaching a similar holding, “Rule 30(b)(6) depositions are different
10 from depositions of individuals.” *Loops LLC v. Phoenix Trading, Inc.*, 2010 WL 786030, slip op.
11 at 2 (W.D. Wash. Mar. 4, 2010). “[L]arge corporations may have ‘voluminous and complex
12 documents and may require testimony from multiple officers and custodians to provide
13 comprehensive testimony’ in response to a 30(b)(6) subpoena.” *Id.* (quoting *State Farm Mut.*
14 *Auto. Ins. Co. v. New Horizont, Inc.*, 254 F.R.D. 227, 234 (E.D. Pa. 2008)). “A party should not
15 be put at a disadvantage when seeking information from such a corporation.” *Id.* Therefore, leave
16 of the Court should not be required for an additional Rule 30(b)(6) deposition.

17 Defendants counter that each Rule 30(b)(6) deposition must count against the limit
18 provided in Rule 30(a)(2). (Dkt. No. 71 at 4.) In support, they cite the advisory committee notes
19 to the 2000 amendment, which provide that “the deposition of each person designated under
20 Rule 30(b)(6) should be considered a separate deposition.” Fed. R. Civ. P. 30 advisory
21 committee’s note to 2000 amendment. But this is not the committee’s full statement. The
22 committee *also* indicates that the convention only applies “[f]or purposes of [the seven-hour]
23 durational limit.” *Id.* When the committee’s notes to *both* the 1993 and 2000 amendments are
24 combined, the resulting guidance is as follows: Without leave of the Court, ten depositions are
25 permitted, each is limited to seven-hours per day to provide deponents with “reasonable breaks
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1 during the day for lunch and other reasons,”¹ and all Rule 30(b)(6) depositions are considered a
2 single deposition *for purposes of the numeric limit*. This conclusion is consistent with other
3 court’s holdings. *See, e.g., Quality Aero Tech., Inc. v. Telemetrie Elektronik GmbH*, 212 F.R.D.
4 313, 319 (E.D.N.C. 2002); *Meltzer/Austin Rest. Corp. v. Benihana Nat. Corp.*, 2013 WL
5 2607589, slip op. at 11 (W.D. Tex. 2013); *In re Sulfuric Acid Antitrust Litig.*, 2005 WL 1994105,
6 slip op. at 3 (N.D. Ill. 2005).

7 Defendants cite only one case on the issue: *Reynolds Metals Co. v. Alcan, Inc.*, 2005 WL
8 8172239, slip op. at 1 (W.D. Wash. 2005). (Dkt. No. 71 at 4.) But that case does not support their
9 argument. In *Reynolds Metals Co.*, Judge Lasnik granted a motion to compel an additional day of
10 testimony from one of multiple Rule 30(b)(6) designees because the deposition had taken less
11 than seven hours. *See* 2005 WL 8172239, slip op. at 1–2 (finding that the plaintiff “was entitled
12 [to] one day of seven hours for *each of the depositions of the five 30(b)(6) witnesses.*” (emphasis
13 added)). The Court is unaware of any case supporting Defendants’ argument that each 30(b)(6)
14 designee counts separately against the ten-deposition limit. Accordingly, the Court FINDS that
15 the deposition of Ms. McAninch may go forward without leave.

16 Plaintiffs ask the Court for attorney fees and the appointment of a magistrate to ensure
17 Defendants’ compliance with this order. (Dkt. No. 66 at 9.) Attorney fees are not warranted.
18 Given the lack of controlling authority on the issue described above, Defendants’ failure to
19 provide Plaintiffs with access to Ms. McAninch was substantially justified. *See* Fed. R. Civ. P.
20 37(a)(5)(A). Moreover, appointing a magistrate is unnecessary. While it ideally should not have
21 to, the Court has demonstrated that it is fully capable of resolving discovery disputes that the
22 parties cannot and, if necessary, enforcing those rulings.

23 Accordingly, Plaintiff’s motion to compel (Dkt. No. 66) is GRANTED in part and
24 DENIED in part. Defendants’ motion to strike (Dkt. No. 83) is DENIED as moot. While
25 Plaintiff’s reply brief (a) exceeds the relevant page limits, (b) presents impermissible argument

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¹ Fed. R. Civ. P. 30 advisory committee’s notes to 2000 amendment.

1 and (c) makes unsupported assertions, the Court need not consider those impermissible pages,
2 argument, or allegations to reach this holding.

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4 DATED this 28th day of October 2021.

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A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE